

CITY OF LAS VEGAS, NEW MEXICO

Ordinance No. 21-18

AN ORDINANCE TO AMEND the Code of the City of Las Vegas by adding new Sections 450-141, 450-142, 450-143 and 450-144 to a newly created Article XII, entitled “Cannabis Zoning”, amending Article I Section 160, and repealing and replacing Sections 450-7 limited to the definition of “HOME OCCUPATION”, 450-119(D)(3), 450-120(D)(2), 450-121(D)(2), 450-122(D)(1), 450-123(D)(1), 450-124(D)(1), 450-125(C)(2), 450-125(D)(1), 450-126(C)(1), 450-126(D)(1), 450-127(D)(1), 450-128(C)(3), 450-128(D)(3), 450-129(D)(1), 450-130(E), 450-131(C), Section 301-6 introduction and subsections (A) and (B), Section 440-18, and Sections 450-83, 450-84, 450-88, 192-53, 12-6-12.2(K), and all other portions included below. This Ordinance is enacted pursuant to Sections 2.02 of the City of Las Vegas Municipal Charter and 450-98 of the City Ordinances, is an exercise of the City of Las Vegas home rule powers, and is in the best interests for the safety, welfare and public health of the City’s residents and visitors.

BE IT ENACTED by the Governing Body of the City of Las Vegas as follows:

Section 1. The Code of the City of Las Vegas is hereby amended by adding thereto a new Article XII entitled “Cannabis Zoning” and Section 450-141, 450-142, and 450-143 to the existing Chapter 450, Zoning, to read as follows:

450-141. Cannabis findings.

The City’s Governing Body makes the following findings with regarding to cannabis:

A. Cannabis establishments and cannabis consumption areas are uses not currently and specifically enumerated in the City’s planning and zoning ordinances.

B. Cannabis cultivation, production, and manufacturing creates strong odors, can involve the use of significant amounts of energy and water, and requires security and other measures to reduce the risk of theft or other diversion to the illegal cannabis market, including possession and use by persons under the age of twenty-one and others who are not allowed to use or be in the vicinity of cannabis.

C. Cannabis is an intoxicating drug, making it appropriate to regulate the hours during which cannabis products may be sold and the areas in which cannabis products may be consumed.

D. The use of cannabis products creates health risks due to exposure to carcinogens, secondhand smoke or vaporized cannabis concentrates.

E. Density limits are necessary to ensure that cannabis businesses are not unduly concentrated and do not crowd out other commercial uses.

F. All City ordinances regarding cannabis are intended and designed to protect the public health, safety and welfare from the adverse effects of cannabis in accordance with federal and state law and the City's home-rule powers.

450-142. Cultivation and production of cannabis and cannabis products in residential structures for personal use.

A. Purpose. This Section is intended to apply to any and all personal use or activity involving cannabis and cannabis products in residential structures to the extent authorized by applicable federal, state and local laws. The words in this Section 450-142 shall have the meanings of the words as specifically and expressly defined in NMSA 26-2C-2.

B. Any person, for purposes of this subsection and consistent with New Mexico state law, who is twenty-one (21) years of age or older, and not otherwise prohibited from possessing or being in the vicinity of cannabis or cannabis products, that is cultivating, producing or manufacturing cannabis or cannabis products solely for his or her own personal use, may possess, cultivate, process, manufacture or transport no more than six (6) mature cannabis plants and six (6) immature plants, as defined by the Cannabis Regulation Act, provided that despite a household having multiple residents, no more than twelve (12) mature cannabis plants may be present in any one household. Such possession shall be subject to the following requirements:

1. Such possessing, cultivation, processing, manufacturing or transporting of cannabis plants for personal use must be in full compliance with the applicable provisions of New Mexico law.

2. Such cannabis plants shall be possessed, cultivated, processed, manufactured or transported within the primary residence of the person possessing, cultivating, processing, manufacturing or transporting the cannabis plants for person use only within the following zones: RA, RR, R-1, R-2 or R-3. No commercial cannabis activity or cannabis consumption area shall occur or be located in, or within 300 feet of, zones RA, RR, R-1, R-2 or R-3.

3. The possession, use, cultivation and processing of such cannabis for personal use must not be observable or perceptible from the exterior of the primary residence, or adjacent or nearby properties, including without limitation: (a) common visual observation, including any form of signage; (b) unusual odors, smells, fragrances or other olfactory stimulus; (c) light pollution, glare or brightness that disturbs others or affects property in the vicinity; or (d) noise from ventilation fans and other noise associated with the possession, use, cultivation or processing of cannabis that disturbs others or affects property in the vicinity.

4. Cannabis plants shall not be cultivated, stored, used, processed or otherwise located in the common area of a planned community or of a multi-family or attached residential structure.

5. Possession, storage, cultivation and processing of cannabis shall meet the requirements of all adopted City building and safety codes, including without limitation electrical systems, building codes and ventilation systems, as the same may be amended from time to time.

6. The use of any flammable or volatile solvent, gas, chemical or other compound in the extraction from cannabis of tetrahydrocannabinol (“THC”) or other elements is prohibited.

7. The possession, storage, cultivation and processing of cannabis shall meet the requirements of all City water and wastewater regulations.

8. Cannabis use shall not occur in a private residence if said residence is used commercially to provide child care, adult care or health care or any combination of those activities. Outdoor cultivation or processing of cannabis is prohibited.

9. Any person who desires to cultivate or process cannabis or cannabis related products within a primary residence that they do not own, shall obtain the prior written consent of the property owner before commencing any cultivation or processing of cannabis or cannabis related products on the property.

10. Any City code enforcement officer, San Miguel County Sheriff’s law enforcement officer, City law enforcement officer, City Fire Marshal, City Fire Chief or other City designee may enforce the provisions herein or issue citations for violation of this Section 450-142. In addition to any federal, state or other applicable fines or penalties, any violation of this Section 450-142 shall incur a non-discretionary fine of \$1,000.00, and each day that a violation occurs shall be a separate offense. The City reserves the right to terminate any City-issued or City-provided licenses, registrations, approvals, utilities or other such matter upon a second violation of City ordinances. Nothing herein shall prevent the City from seeking injunctive relief.

450-143. Commercial cannabis activity and cannabis consumption areas in non-residential zones.

The words in this Section 450-143 shall have the meanings of the words as expressly defined in NMSA 26-2C-2, unless expressly defined herein. Any entity, for purposes of this subsection and consistent with New Mexico state law, who is licensed pursuant to the New Mexico Cannabis Regulation Act (“CRA”) and not otherwise prohibited from engaging in commercial cannabis activity or a cannabis consumption area, may engage in commercial cannabis activity or a cannabis consumption area subject to the following requirements:

A. Commercial cannabis activity as defined by New Mexico law shall be allowed only in non-residential units or buildings in the following zones: C-2, C-3, M-1 and M-2. No commercial cannabis activity shall occur or be located in a CH zone. Outdoor commercial cannabis activity or cannabis consumption area shall be prohibited.

B. No commercial cannabis activity or cannabis consumption area shall occur, or be located, in the common areas of any commercial or multi-family building located within the City limits. Commercial cannabis activity and a cannabis consumption area shall conform to all City ordinances, including without limitation all requirements of building, safety and fire codes. Any entity involved in commercial cannabis activity or a cannabis consumption area, and required to be licensed pursuant to the CRA, shall have an initial code inspections by the City, and shall comply with any and all requirements and conditions of said inspections prior to any commercial

cannabis activity or activity regarding a cannabis consumption area, and shall submit to periodic code inspections. Fees for various code inspections:

Fire inspection: \$150.00

Water and wastewater inspection: \$150.00

Building inspection: \$150.00

Security inspection: \$150.00

C. Commercial cannabis activity, or any portion thereof, and a cannabis consumption area shall not be permitted on an exterior portion of a lot, unit, building or structure, and shall maintain a minimum separation distance of at least a 300 foot radius, with the radius being measured from the subject property boundaries, from any school or daycare center that existed at the time the entity was issued a license by the State of New Mexico.

D. Commercial cannabis activity, or any portion thereof, cannabis use or a cannabis consumption area shall not disturb adjacent or nearby properties, including without limitation: (a) any form of signage not approved by the City; (b) unusual odors, smells, fragrances or other olfactory stimulus; (c) light pollution, glare or brightness that disturbs others or affects property in the vicinity; or (d) noise from ventilation fans. While City-approved signage may be located on the exterior of the building or unit, and persons may have a general knowledge that cannabis goods and/or services may be obtained at the location consistent with the CRA.

E. The use of any flammable or volatile solvent, gas, chemical or compound in the extraction of tetrahydrocannabinol ("THC") or other elements from cannabis is prohibited, except as may be permitted by New Mexico state law, and for an entity licensed pursuant to the CRA, and then only after inspection and approval by the City.

F. A daycare center shall mean any place which contributes to or is otherwise engaged in the supervision of minors, the elderly, and those with disabilities. A school shall mean any place which engages in the business, industry or administration of instructing or educating persons of any age, including without limitation public, private, charter and religious education or instruction.

G. For entities subject to the CRA, cannabis and products containing THC shall only be consumed in a cannabis consumption area as approved by CCD, which shall only be allowed within a licensed cannabis consumption area that occupies a standalone building from which smoke and cannabis odor does not infiltrate other indoor workplaces or other indoor places where smoking is otherwise prohibited pursuant to the Dee Johnson Clean Indoor Air Act. Cannabis producers, cannabis producer microbusinesses, and cannabis manufacturers shall use industry standard techniques to minimize odors, toxic or noxious particulates or matter, such as activated carbon filtration and regular maintenance of HVAC systems. Cannabis producers, cannabis producer microbusinesses, cannabis manufacturers, and cannabis consumption areas shall have an odor control plan approved by the City prior to conducting any cannabis related business.

H. Any and all cannabis consumption areas or cannabis establishments shall limit their hours of operation to the hours between 8:00 a.m. and 11:00p.m. from Monday to Saturday, and between noon and 10:00pm on Sundays, and any entity engaging in commercial cannabis activity or a cannabis consumption area shall have fulltime in-person security to prevent access for those under the age of 21 years and others who are not permitted in a cannabis consumption area or a location conducting commercial cannabis activity. The sales or service of any products containing THC from mobile, portable or temporary units, or drive-through locations is prohibited. Any entity engaged in any activity involving cannabis or products containing THC shall provide to the City, for the City's approval, a plan for the monitoring and disposal of all waste products.

I. Any entity engaging in commercial cannabis activity or a cannabis consumption area shall maintain a minimum separation distance of at least a 500 foot radius, with the radius being measured from the subject property boundaries, from any existing location engaging in commercial cannabis activity or a cannabis consumption area.

J. All cannabis producers and cannabis producer microbusinesses using conditioned soil shall comply with the New Mexico Soil and Water Conservation Act.

K. No alcohol or alcoholic products shall be located, sold, consumed or served, in a cannabis consumption area.

L. Any City code enforcement officer, San Miguel County Sheriff's law enforcement officer, City law enforcement officer, City Fire Marshal, City Fire Chief or other City designee may enforce the provisions herein or issue citations for violation of this Section 450-142. In addition to any federal, state or other applicable fines or penalties, any violation of this Section 450-142 shall incur a non-discretionary fine of \$1,000.00, and each day that a violation occurs shall be a separate offense. The City reserves the right to terminate any City-issued or City-provided licenses, registrations, approvals, utilities or other such matter upon a second violation of City ordinances. Nothing herein shall prevent the City from seeking injunctive relief.

M. It is the responsibility of the owners and operators of the business involving cannabis to ensure that it is, at all times, operating in a manner compliant with all applicable laws, and any regulations promulgated thereunder, and any specific additional operating procedures or requirements which may be imposed as conditions of approval of any licenses or privileges. Nothing in the City's ordinances shall be construed as authorizing any actions which violate federal law, state law, or local ordinances with respect to the operation of any business involving cannabis.

450-144. Extra-Territorial Zone Application.

The application process for obtaining an application to engage in commercial cannabis activity or a cannabis consumption area within the extra-territorial zone ("ETZ") shall require the following:

1. San Miguel County (the “County”) shall be the primary point of contact and decision-making for all applicants if utilities are not provided by the City, which includes without limitation non-municipal/non-City sources of water, septic, solid waste provided by the County and electrical services by a provider other than PNM/Avangrid or some other merger, subsidiary or affiliate of said companies. In such circumstances, County cannabis fees shall apply. The City shall take be the primary point of contact and decision-making for all applications if one or more of the utilities are provided by the City, which includes without limitation electrical services by a provider other than PNM/Avangrid or some other merger or affiliate of said companies, City wastewater, City solid waste or City gas. In such situations, City cannabis fees shall apply. An application under this Section shall not be complete unless it includes a mandatory fee of \$150.00, to be paid to the entity which is not serving as the primary point of contact and decision-making, for the resources required to jointly evaluate any ETZ matters.

2. All applicants shall have an initial consultation with the Planning and Zoning Departments of the County and City.

3. If at any time the County or City desires a conditional use permit for the applicant, thus requiring a Planning and Zoning Commission hearing and/or approval by the governing body of the County or City, the Planning and Zoning Departments of the County and City shall be present for any public hearing to address any concerns of the County or City.

4. Approved applicants shall be required to attain both a County and City business license or registration, whichever is applicable. An inspection by the City Fire Department shall be required for any business operating in the ETZ, subject to the City’s Fire Inspection fee.

Section 2. The Code of the City of Las Vegas is hereby amended by repealing and replacing Article I of Section 160 with the following new Article I entitled “Business Registration” to read as follows:

160-1 Definitions. For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ADULT BUSINESS. A business as described in Section 160.26 through 160.27.

ENGAGING IN BUSINESS. Persons operating, conducting, doing, carrying on, causing to be carried on, or pursuing any business, profession, occupation, trade, pursuit or activity for the purpose of profit and who are required to obtain a New Mexico taxpayer identification number.

PERSON. Any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other entity engaging in a business, profession, occupation, trade, pursuit or commercial activity.

PLACE OF BUSINESS. The premises within the City, whether it be a personal residence, main business location or an outlet, branch or other location thereof, temporary or otherwise, where a person is engaging in business. In the event there is no location, but the business is transacted or the service provided in the location of the buyer, then the general sales area within the City shall

be considered a PLACE OF BUSINESS. Unless a construction contractor has at least one permanent location within the city, PLACE OF BUSINESS includes a construction site, located in the City.

SEPARATE BUSINESS. A business located or conducted at the same address as another registered business, whether or not owned by the same person, that is additional to and different from the other registered business. A business will be considered a SEPARATE BUSINESS if it has a different name and it is not so related to the other business as to be a component part of the other business

160-2 Registration fee; Exemptions.

A. No business registration fee shall be imposed on any business which is licensed under Article II of Section 160, or which is exempted pursuant to NMSA § 3-38-1 et seq., as amended.

B. There is imposed on each place of business conducted in the City a business registration fee for each calendar year. The fee of \$35.00 is imposed pursuant to NMSA § 3-38-3 as it now exists or is amended and shall be known as the “business registration fee.” The business registration fee shall be for a full 12-month period, but may not be prorated for business conducted for a portion of the year. Upon issuance, the business registration certificate shall be displayed within the business premises for viewing.

C. There is imposed on each entity engaging in adult business or licensed by the New Mexico Cannabis Control Division (“CCD”) in the City a cannabis/adult business registration fee for each calendar year. The fee of \$350.00 is imposed and shall be known as the “cannabis business registration fee.” The cannabis business registration fee shall be for a full 12-month period, but may not be prorated for business conducted for a portion of the year. Each entity licensed by the CCD, after obtaining said licensure, as a provisional license letter from the CCD shall not be sufficient, shall obtain a City cannabis business license annually per calendar year, including the additional fee for the appropriate license acquired by the CCD for each cannabis establishment location, commercial cannabis activity location or cannabis consumption area within the City limits, which shall be as follows, with the City retaining the right to incorporate additional fees from time to time:

Courier \$60.00 first year, then \$30.00 annually

Testing laboratory \$250.00 first year, then \$100.00 annually

Manufacturer \$250.00 first year, then \$100.00 annually

Producer \$275.00 first year, then \$150.00 annually

Retailer \$300.00 first year, then \$150.00 annually

Research laboratory \$250.00 first year, then \$100.00 annually

Vertically integrated cannabis establishment \$750.00 first year, then \$100.00 annually

Cannabis producer microbusiness \$50.00 for one hundred plants or less first year then \$50.00 annually, or \$100.00 for one hundred and one plants to two hundred fifty plants first year, then \$100.00 annually

Integrated Cannabis microbusiness (activity based) \$250.00 first year, then \$100.00 annually
Cannabis consumption area \$350.00 first year, then \$350.00 annually

Upon issuance, the cannabis business registration shall be displayed within the cannabis business premises for viewing. The applicant for a cannabis business registration, its principals, registered manager, and all employees must be at least twenty-one years of age, meet all requirements under New Mexico law, and hold valid licenses and registrations as required by the State of New Mexico, including all applicable cannabis licenses.

D. The City, as the local business registration, and cannabis business registration, authority, shall have the power and authority to: (i) issue, deny or revoke a City business registration, or cannabis business registration, and renewals of the same, and where necessary, to conduct public hearings related thereto; (ii) impose any sanctions on any business registration or cannabis business registration, including revocation, upon its own authority and initiation, or in response to a complaint by any person for any violation by the licensee after investigation and a public hearing; (iii) adopt forms, fees, and submission requirements for a City business registration and cannabis business registration.

160-3 Application for issuance.

A. Any person proposing to engage in business within the City limits shall apply to the City and pay a business registration fee as stipulated for each place of business within the City limits, prior to engaging in business.

B. Any person filing an application for issuance of a business registration shall include in the application the current taxpayer identification number, issued by the New Mexico Taxation and Revenue Department, and any other lawful information required by the City, including without limitation the disclosure of handling of hazardous, special materials, toxic or radioactive materials, or disclosure of whether the business is engaged in cultivating, processing, producing, manufacturing or sales of cannabis, or goods and services derived from cannabis. For each business engaged in any of the aforementioned matters, along with its application, such business shall submit: (i) a description of the type of products to be cultivated, processed, produced, manufactured or sold; (ii) the equipment to be used, including a list of any solvents, gases, chemicals or other compounds that will be used, kept or created in the course of business, including the location of such materials and how such materials will be stored; (iii) the projected amount of electricity to be used on a monthly basis and a list of equipment which will use such electricity, including the source of all electricity, and a letter from the applicable electric utility stating that the power capacity at the proposed location is sufficient for the intended use; (iv) the projected amount of water to be used on a monthly basis and a description of what the water will be used for, including the source of all water used by the business, and a letter from the applicable water utility stating the water capacity at the proposed location is sufficient for the intended use; (v) the projected amount of wastewater to be produced on a monthly basis and a description of what solvents, chemicals, compounds or other elements may be included in the wastewater, including how and where the wastewater will be disposed of, a wastewater disposal

plan, and a letter from the applicable wastewater utility stating that the wastewater capacity at the proposed location is sufficient for the intended use; (vi) an odor control plan indicating how the applicant intends to comply with the requirements of City and State laws and regulations; (vii) a security plan indicating how the applicant will comply with the requirements of City and State law and regulations; (viii) a site plan to scale and dimensioned, depicting the building footprint, parking areas, vehicle circulation and driveways, pedestrian facilities, lighting, landscaping, loading facilities, freestanding sign locations, snow removal strategy, trash receptacle location and fences; (ix) all cannabis-related businesses that handle or produce water contaminated by cannabis and cannabis products shall submit a water reclamation plan to ensure water within the City is not contaminated; and (x) a letter of authorization with original signatures from the owner(s) of the subject property stating their agreement with the intended use of the property.

C. The City shall not issue a business registration authorizing the conduct of commercial activity to any person or entity whose records reflect any unresolved noncompliance with the business registration provisions or any other City ordinances or regulations. No rights, benefits, permits, approvals or other such items contained in this Chapter 160 shall be transferred, conveyed or assigned to any other entity or location.

160-4 Renewal, revocation, late fee and violation.

A. Before the expiration of the business registration or cannabis/adult business registration, any person or entity with a place of business in the City and subject to this subchapter shall apply to renew the business registration and shall pay an annual fee of \$35.00 to the City for each business registration and \$350.00 for each cannabis/adult business registration.

B. The City shall not issue a renewal for the conduct of commercial activity to any person or entity whose records reflect any unresolved non-compliance with the business registration provisions or any other City ordinances or regulations.

C. Compliance with this Section 160 shall not exempt any business from compliance with all other applicable provisions of the City ordinances and regulation.

D. If any business is conducted in violation of this Article I of Section 160, the City may institute appropriate legal action brought to prevent the conduct of business or to restrain, correct or abate the violation. Any person who has not paid the registration fee for issuance or renewal by the deadline date shall be sent a notice of violation, ordering appearance before the City Clerk within 30 days from date notice is mailed, to show cause why the City should not initiate proceedings under this Article I of Section 160. Upon the City finding evidence of a violation of this Section, the City may set a hearing before the Governing Body to consider revocation or any other appropriate action. At such hearing, the Governing Body will make findings as to the reason(s) for revoking the registration or allowing it to remain in place with conditions. Revocation requires the business to immediate cease any and all commercial activity. The City, in its sole discretion, may fine a business for violation of this Section, up to \$300.00 for each separate violation, with cumulative fines for each day a violation continues.

E. The Governing Body hereby declares and determines that the licensing and regulation of certain businesses would be conducive to the promotion and protection of the health and general welfare of the City. The fees imposed in this Section upon businesses which are hereby determined to affect the health and general welfare of the City shall bear a reasonable relation to the actual costs of the City in regulating each place of business named herein.

Section 3. The Code of the City of Las Vegas is hereby amended by repealing and replacing Sections 450-7 limited to the definition of “HOME OCCUPATION”, 450-119(D)(3), 450-120(D)(2), 450-121(D)(2), 450-122(D)(1), 450-123(D)(1), 450-124(D)(1), 450-125(C)(2), 450-125(D)(1), 450-126(C)(1), 450-126(D)(1), 450-127(D)(1), 450-128(C)(3), 450-128(D)(3), 450-129(D)(1), 450-130(E), 450-131(C) with the aforementioned portions to read as follows:

450-7 HOME OCCUPATION. Any occupation or business activity that results in a product or service and that is conducted for gainful employment in a dwelling unit by a person residing in that dwelling unit. A home occupation is customarily incidental to the residential use of the dwelling unit. Cannabis consumption area or commercial cannabis activity, or any portion thereof, which requires a license pursuant to the New Mexico Cannabis Regulation Act (“CRA”), shall not be a home occupation. The words in this Chapter 450 related to cannabis shall have the meanings of the words as expressly defined in NMSA 26-2C-2, unless expressly defined herein.

450-119(D)(3) Industrial use, cannabis consumption area or commercial cannabis activity, or any portion thereof, which requires a license pursuant to the New Mexico Cannabis Regulation Act (“CRA”).

450-120(D)(2) Commercial uses, cannabis consumption area or commercial cannabis activity, or any portion thereof, which requires a license pursuant to the New Mexico Cannabis Regulation Act (“CRA”).

450-121(D)(2) Commercial uses, except for those uses specifically listed as special uses. There shall be no cannabis consumption area, commercial cannabis activity, or any portion thereof, which requires a license pursuant to the New Mexico Cannabis Regulation Act (“CRA”).

450-122(D)(1) Commercial uses, except for those uses specifically listed as special uses or allowed under a home occupation. There shall be no cannabis consumption area, commercial cannabis activity, or any portion thereof, which requires a license pursuant to the New Mexico Cannabis Regulation Act (“CRA”).

450-123(D)(1) Commercial uses, except for those uses specifically listed as special uses or allowed under a home occupation. There shall be no cannabis consumption area, commercial cannabis activity, or any portion thereof, which requires a license pursuant to the New Mexico Cannabis Regulation Act (“CRA”).

450-124(D)(1) Agricultural, cannabis consumption area or commercial cannabis activity, or any portion thereof, which requires a license pursuant to the New Mexico Cannabis Regulation Act (“CRA”).

450-125(C)(2) Cannabis consumption area or cannabis retailer, which requires a license pursuant to the New Mexico Cannabis Regulation Act (“CRA”), at least 300 feet from zones RA, RR, R-1, R-2 or R-3.

450-125(D)(1) Agriculture and cannabis producer activity which requires a license pursuant to the New Mexico Cannabis Regulation Act (“CRA”).

450-126(C)(1) The cannabis retailer sales which requires a license pursuant to the New Mexico Cannabis Regulation Act (“CRA”), at least 300 feet from zones RA, RR, R-1, R-2 or R-3.

450-126(D)(1) Agricultural, and cannabis producer activity which requires a license pursuant to the New Mexico Cannabis Regulation Act (“CRA”).

450-127(D)(1) Agricultural, cannabis consumption area or commercial cannabis activity, or any portion thereof, which requires a license pursuant to the New Mexico Cannabis Regulation Act (“CRA”).

450-128(C)(3) Nursery for plants, and cannabis producer and cannabis manufacturer activities which requires a license pursuant to the New Mexico Cannabis Regulation Act (“CRA”), at least 300 feet from zones RA, RR, R-1, R-2 or R-3.

450-128(D)(3) Commercial uses, cannabis consumption area and cannabis retailer sales which requires a license pursuant to the New Mexico Cannabis Regulation Act (“CRA”).

450-129(D)(1) Agricultural uses, cannabis consumption area and commercial cannabis activity, or any portion thereof, which requires a license pursuant to the New Mexico Cannabis Regulation Act (“CRA”).

450-130(E) Development standards. A planned community shall be considered a separate zoning district in which the development plan, if and when approved, shall establish the restrictions and regulations according to what kind of development shall occur. However, R-1 setback yard development standards shall prevail for all principal permitted uses structures. There shall be no cannabis consumption area or commercial cannabis activity, or any portion thereof, which requires a license pursuant to the New Mexico Cannabis Regulation Act (“CRA”), or within 300 feet of zones RA, RR, R-1, R-2 or R-3.

450-131(C) Uses requiring special use permit. Refer to uses permitted by special use in the respective zone. There shall be no cannabis consumption area, cannabis manufacturer or cannabis producer activity, which requires a license pursuant to the New Mexico Cannabis Regulation Act (“CRA”).

Section 4. The Code of the City of Las Vegas is hereby amended by repealing and replacing Sections 290-99(A) and Chapter 301 to read as follows:

290-99 Penalty.

A. If any person violates any of the provisions of this chapter, excluding Section 290-31, the City shall assess a fine for such violation. The mandatory amounts are as follows: first offense \$500, second offense \$750, third and each subsequent offense \$1,000. Each day this chapter is violated shall constitute a separate violation.

301-1 Title and purpose.

This chapter is called and may be cited as the "Nuisances Code Ordinance" for the Municipality of Las Vegas, New Mexico (the "City"). The abatement of public nuisances for the protection of public health, safety and welfare is a matter of local concern. The purpose of this Chapter 301 is to abate public nuisances. The actions provided in Chapter 301 are designed to abate public nuisances by removing the property, both real and personal, from criminal and unsafe use, to make property owners vigilant in preventing public nuisances on, in or using their property and responsible for the lawful use of their property by tenants, guests and occupants, and to deter public nuisances.

301-2 Definitions and rules of construction.

In the construction of the Nuisances Code Ordinance, the following definitions and rules of construction shall be observed, unless it shall be otherwise expressly provided in any section of this chapter, or unless inconsistent with the manifest intent of this chapter:

CITY CODE ENFORCEMENT OFFICER

A City employee who is charged with carrying out and enforcing provisions of the City Code, including but not limited to the provisions of this chapter.

LEGAL OR EQUITABLE INTEREST OR RIGHT OF POSSESSION

Every legal or equitable interest, title, estate or right of possession recognized by law and equity, including without limitations freeholds, life estates, future interests, condominium rights, time-share rights, leaseholds, easements, licenses, liens, deeds of trust, contractual rights, mortgages, security interests, real estate contract, and any right or obligation to manage or act as agent or trustee for any person or entity holding any of the foregoing.

OWNER

Includes any person that holds record title or an interest in or to the property and any person entitled under any agreement to the control or direction of the management or disposition of the building or premises where the violation in question occurs.

PERSON

Any human being or legal entity, whether incorporated or unincorporated.

SHALL

"Shall" is mandatory, and "may" is permissive.

SOLID WASTE

That which is commonly discarded as waste; or which, if discarded on the ground, will create or contribute to an unsanitary, offensive or unsightly condition. Refuse includes, but is not limited to, the following items or classes of items: waste food; wastepaper and paper products; cans, bottles, or other containers; junked household furnishings and equipment; junked parts or bodies of automobiles and other metallic junk or scrap;

portions or carcasses of dead animals; and collection of ashes, dirt, yard trimmings or other rubbish.

STREET

Any thoroughfare that can accommodate pedestrian or vehicular traffic, is open to the public and is under the control of the City of Las Vegas.

301-3 Violations and penalties.

Any person or entity found guilty of violating any of the provisions of this chapter shall be fined \$500.00 or imprisoned for a period of not more than 90 days, or both, and each day this chapter is violated shall constitute a separate offense. The aforementioned \$500.00 fine is absolute, and no judge shall exercise discretion of said amount.

301-4 Prohibitions and enforcement.

It shall be unlawful for any person or entity who is the owner, manager, tenant, lessee, occupant or other person having any legal or equitable interest or right of possession in or to any real property, motor vehicle, or other personal property ("Interested Person") to cause, permit, maintain, promote, facilitate, fail to prevent, or allow the creation or maintenance of a public nuisance as described in Section 301-6 on such property. For purposes of this chapter, the owner of property means the person in control of the property, or the owner's representative, an agent or attorney-in-fact or power-of-attorney of the owner. Enforcement of a violation of Section 301-6, and administration, supervision or performance of actions taken pursuant to this chapter shall be through the City's code enforcement division.

301-5 Nuisance declared.

For the health, safety and welfare of the City residents and visitors, it is necessary to prohibit certain activities and matters from the public view, including without limitation the observation of activities involving cannabis and cannabis products by persons under 21 years of age, and the accumulation of junk, trash, used tires, vehicle parts, certain vehicles as described below, solid waste on property, and persons living, squatting or otherwise inhabiting a structure without utilities within the City limits by declaring such matters a nuisance. It shall also be unlawful to be in the possession of or maintain a lot, building or structure that is dangerous, unsafe or not compliant with applicable codes, if said non-compliance poses a credible danger, fire hazard or otherwise creates a public nuisance. The following are hereby declared to be a public nuisance:

(A) Abandoned property. Any deteriorated, wrecked, dismantled or partially dismantled, inoperable and/or abandoned property, or in unusable condition, having no value other than nominal scrap or junk value, which has been left unprotected from the elements outside of a permanent and enclosed structure. Without being so restricted this shall include deteriorated, wrecked, dismantled or partially dismantled, inoperable, or abandoned motor vehicles, abandoned mobile homes, trailers, boats, machinery, refrigerators, washing machines and other appliances, plumbing fixtures, furniture, building materials and any other similar articles or personal property in such condition. This Section A is not applicable to areas where such

activity is within the contemplated purpose of duly licensed businesses and such property is kept in a wholly enclosed garage or structure.

(B) Breeding place for flies, rodents and/or pests. The unhealthful accumulation or stockpiling of manure, garbage, tires, debris or discarded items which is a potential harboring place and breeding area for insects, rodents or other non-domesticated animals.

(C) Burning. The burning of any excrement, chemical or plastic substances, or any liquid or substance in violation of federal or state dischargeable substance statutes or City ordinances on any property. This includes the burning of any tires, rubber products, asphalt shingles, plastic, tar paper or any substance which may cause a black, hydrocarbon, toxic, or noxious plume of smoke.

(D) Combustible materials. Any dangerous accumulation upon any property of combustible refuse matter such as paper, sweepings, rags, grass, dead trees, tree branches, wood shavings, wood, magazines, cardboard and other like materials, including any flammable or volatile solvents that may be used to manufacture cannabis products.

(E) Dead animals. For the owner of a dead animal to permit it to remain undisposed for more than seventy-two (72) hours.

(F) Disposal or dumping. The accumulation of garbage, refuse, waste, trash, rubbish or building materials upon any property outside an approved landfill.

(G) Dangerous buildings. Any building or other structure which is in such a dilapidated condition that it is unfit for human habitation, or kept in such an unsanitary or unmaintained condition that it is a menace or danger, or potential danger, to the health of people residing in the vicinity thereof, presents a fire hazard, or presents a danger to adjacent or nearby properties. Any building, property or other structure shall be considered dangerous and not habitable for purposes of this Chapter if said building, property or structure is not connected to, able to use services from, or does not have the infrastructure to provide, the following utilities: potable water from the City or a functioning and producing well; electricity; solid-waste removal; wastewater services from the City or a functioning septic system.

(H) Odors. All disagreeable or obnoxious odors or stench, as well as the conditions, substances or other causes which give rise to the emission or generation of such odors and stench, including smoke and fires.

(I) Pollution. The pollution of any public well, stream, lake, canal, or body of water by sewage, dead animals, dairy waste, industrial wastes, agricultural wastes, cannabis wastes, or other substances. Polluting water consists of knowingly or unlawfully introducing any object or substance into any body of public water causing it to be offensive or dangerous for human or animal consumption, or human or animal use. Polluting water constitutes a public nuisance. For the purpose of this section, "body of water" means any public river or tributary thereof, stream, lake, pond, reservoir, acequia, canal, ditch, spring, well or declared or known groundwaters.

(J) Illegal activity. Any building, structure, or other place or location where any activity is conducted, performed or maintained in violation of law.

(K) Any activity related to cannabis at any location where cannabis or cannabis products are cultivated, processed, manufactured, produced, stored, held, weighed, packaged, used, ingested, disposed or wasted shall not create a nuisance or disturbance that can be observed or perceived from any public place or public property, any adjacent or nearby property, or the exterior of the structure in which said activities are taking place, including without limitation, (i) any form of signage not approved by the City, (ii) abnormal or unusual odors, smells, fragrances or other olfactory stimulus, (iii) light pollution, glare or brightness that disturbs or affects other persons or adjacent or nearby property, or (iv) noise or vibration from ventilation fans that disturb or affect another person or another property. The smell or odor of cannabis or cannabis products shall not be capable of being detected by a person with a normal sense of smell from any adjoining or nearby lot, parcel or tract of land, or from any public right of way, public place or public property. Any property where cannabis is cultivated, processed, manufactured, tested, stored, held, sold, weighed, packaged, used, disposed or wasted shall be used, operated and maintained in such a manner in which at no time shall it constitute a nuisance or hazard to the surrounding area, buildings, businesses or neighborhood.

(L) Unsanitary premises. It shall be unlawful for any person to permit or cause to remain in or on such person's premises any solid waste, weeds, trash, rubbish, overgrown plants or trees, vehicle parts, or other condition which is unsanitary, unmaintained or contrary to public health or safety.

(M) Solid waste receptacles. All solid waste receptacles shall be maintained in a clean and sanitary condition by the owner or person using the receptacle, and such receptacles shall be located only in such places as shall be readily accessible for removing and emptying the same, but shall not be placed in such place or position as may constitute a nuisance or obstruction to vehicular or pedestrian traffic.

(N) Definitions. As used in this chapter, the following terms shall have the following meanings:

DISMANTLED OR PARTIALLY DISMANTLED VEHICLE

Any motor vehicle from which some part or parts which are ordinarily a component thereof have been removed or are missing.

INOPERATIVE OR INOPERABLE MOTOR VEHICLE

Any motor vehicle which by reason of dismantling, disrepair or other cause is incapable of being propelled under its own power.

MOTOR VEHICLE

Any wheeled vehicle which is self-propelled or intended to be self-propelled.

DANGEROUS BUILDING/STRUCTURE

Any building or structure from which the foundation, windows, roofs, walls, vents, floors, and/or doors are susceptible to precipitation, insects, rodents, and vermin entering

the building, or causing an infestation that can affect the public comfort, health, peace, welfare, or safety.

UNSAFE BUILDING/STRUCTURE

Any building or structure, or any part of a building or structure, that is in an impaired condition that makes it unsafe to any person, animal or nearby or adjacent property.

301-6 Notice to abate.

Any municipal code enforcement officer, or other person designated by the City, upon observing any violation of this chapter shall issue a notice to an Interested Person. The notice shall describe the violation and shall provide a time limit for remedying the violation by the Interested Person, which shall not be less than two days or more than five days after notice is given by the City. The violation notice may be served personally upon any of the aforementioned persons in this section, by certified mail to the property's address or posted on the property

301-7 Contents of notice; red tag; time limit for compliance.

(A) The first notice will be in the form of a violation notice (red tag) which will be delivered pursuant to 301-7. The red tag will describe the violation and contain a compliance date. If the violation is not fully remedied by the stated deadline, then the City, in its sole discretion, may proceed with abatement of the violation, with the filing of a complaint in a court of law, or may issue a second red tag notice. If the violation is not fully remedied by the deadline stated in the second red tag, then the City may proceed, in the City's sole discretion, with abatement of the violation or with the filing of a complaint in a court of law. The property owner may request in writing from the Community Development Department an extension of the red tag deadline, which may be granted in the City's sole discretion. The City, in its sole discretion, may bypass the issuance of a violation notice and proceed directly to filing a complaint in a court of law.

301-8 Abatement by City.

Upon the failure to timely abate the nuisance pursuant to 301-7, the City may proceed without notice to abate such nuisance itself.

301-9 City's cost declared lien.

Any and all costs incurred by the City in the abatement of a nuisance, or for amounts or fines assessed or arising under this chapter, shall constitute a lien against the property upon which the nuisance existed, which lien, and its contents, shall be recorded in a form that is substantially similar to the lien form required by NMSA 3-36-1. The principal amount of any lien imposed by the City under this Chapter shall bear interest at the rate of twelve percent per annum from the date of recording of the lien. The City, in its sole discretion, may foreclose on the lien, sell or assign such lien, or take any other action it deems necessary regarding the lien.

301-10 Alternative method of abatement.

A. Except as otherwise provided in this Section, an action filed in court for abatement shall be governed by the New Mexico Rules of Civil Procedure.

B. A civil action to abate a public nuisance may be brought in any court of competent jurisdiction against any person or entity who violates any provision of this Chapter.

C. For cases in the City's Municipal Court, a lien against real estate may be foreclosed in the same manner that mortgages or other liens against real estate are foreclosed with like rights of redemption. A lien against personal property may be foreclosed in the same manner security interests are foreclosed. At the trial of any case foreclosing any lien, the recitals of the lien or other evidence of indebtedness shall be received in evidence as prima facie true. In the foreclosure of any lien created by municipal ordinance or under authority of law, a reasonable attorney's fee shall be granted by the court as part of the reasonable costs of the case.

D. The City may file a criminal complaint for public nuisance in the appropriate court as provided by New Mexico law.

E. Pursuant to NMSA 30-8-8(B), as it may be amended, a civil action to abate a public nuisance may be brought, by verified complaint in the name of the state without cost, by any public officer or private citizen, in the district court of the county where the public nuisance exists, against any person, corporation or association of persons who shall create, perform or maintain a public nuisance.

Section 5. The Code of the City of Las Vegas is hereby amended by repealing and replacing Section 440-18 to read as follows:

440-18 Limitation of use. Resale of water service or the furnishing of water service to others by a customer shall not be permitted except where such resale or furnishing of service is provided for in the applicable schedule and in a written agreement between the customer and the City. City municipal water and wastewater shall not be used for the commercial cultivation, processing, manufacturing or production of cannabis or cannabis products or other commercial agricultural or commercial dairy purposes.

Section 6. The Code of the City of Las Vegas is hereby amended by repealing and replacing Sections 450-83, 450-84 and 450-88 to read as follows:

450-83 Filing fee for variance, conditional use and special use permit. A fee of \$175.00 for each variance or special use application and a fee of \$800.00 for each conditional use application shall be paid to the City of Las Vegas through the Community Development Department upon the filing of such application as provided in this chapter. Paying of the application fee shall not be construed in any way to be approval of the proposed permit, and no refund of any fee shall be granted under any circumstances. All entities which submitted a medical cannabis application or recreational license application with the New Mexico Cannabis Control Division ("CCD") for commercial cannabis activity or cannabis consumption area, including without limitation all entities currently and completely licensed for medical use pursuant to the Lynn and Erin

Compassionate Use Act, are required to submit a conditional use application to the City, pay the non-refundable application fee and provide a copy of the entity's approved license from the CCD for the City's consideration of conditional use for commercial cannabis activity or a cannabis consumption area, with the understanding that submittal of such application to the City shall not in any way guarantee approval. Currently licensed hemp producers in good standing with the New Mexico Environmental Department and the Secretary of State's Office, and currently licensed medical cannabis producers in good standing with the New Mexico Department of Health and the CCD seeking dual licensure for recreational cannabis production, must also submit a conditional use application to the City, and comply with all City codes.

450-84 Setting hearings. All completed applications for variances, conditional use or special use permits, as provided in this chapter, shall be set by the City Manager or City Manager's designee for public hearing. The date of the first hearing shall not be less than 15 days or more than 60 days from the date of the filing of a completed application.

450-88 Board to act on variance, special use or conditional use.

A. Not more than 60 days following completion of its investigation and hearings on the application for a variance, conditional use or special use, the Board of Adjustment shall by majority vote: (1) grant or deny the variance or special use permit subject to specified conditions; and (2) adopt written findings which provide all facts relied upon by the Board in rendering its decision, set forth whether the facts meet or fail the requirements of this chapter, and state the reasons for any conditions imposed by the Board; all of which will be provided in the minutes of the Board's meeting. All special or conditional use applications shall have a site plan attached to the application before the City will review or process the application. Approval of the site plan shall be obtained prior to any development of the property. The site plan at a minimum shall include the following: (i) scale and north arrow; (ii) lot boundaries and easements; (iii) existing and proposed utilities, (iv) existing and proposed rights-of-way; (v) proposed structures with uses, dimensions and setbacks; (vi) proposed ingress, egress, parking and circulation; (vii) landscaping and landscape buffers; (viii) elevations; (ix) adjacent property characteristics; and (x) preliminary drainage plan.

B. Failure of the Board to act on any variance, special use or conditional use application within 60 days from the date of the filing of a completed application shall qualify the applicant to request a hearing before the City's Governing Body. No rights, benefits, permits, approvals or other such items contained in this Chapter 450 shall be transferred, conveyed or assigned to any other entity or location.

Section 7. The Code of the City of Las Vegas is hereby amended by repealing and replacing Section 192-53 to read as follows:

192-52 Unlawful possession of cannabis; penalties.

Cannabis shall have be defined as provided in the Cannabis Regulation Act. It shall be unlawful to use, possess, cultivate, process, manufacture, sell, give away, or take any other action regarding cannabis that is contrary to law.

Section 8. The Code of the City of Las Vegas is hereby amended by repealing and replacing Section 12-6-12.2(K) to read as follows:

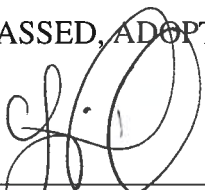
If a person is convicted of driving a motor vehicle while under the influence of intoxicating liquor or drugs in violation of § 12-6-12.1A, B, C or D, a first offender, at the discretion of a trial court after a presentence investigation, including an inquiry to the Motor Vehicle Division of the Transportation Department concerning the driver's driving record, may receive a deferred sentence on the condition that the driver attend a driver rehabilitation program, also known as the "driving while intoxicated school," approved by the court and the Division and such other rehabilitative services as the court may determine to be necessary; however, imposition of a deferred sentence shall classify the person as a first offender. The Municipal Court shall forward to the Division the abstract of all proceedings and the report of the disposition of the case. For the purpose of this subsection, cannabis, as defined by NMSA 26-2C-2, shall be classified as a drug.

Section 9. The Governing Body finds, determines and declares that this ordinance is promulgated for the health, safety and welfare of the public, and that this ordinance is necessary for the preservation of health, safety and for the protection of the public welfare.

Section 10. Severability. The provisions of this ordinance are declared to be severable, and if any portion of this ordinance, for any reason, is held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this ordinance. The Governing Body specifically finds and declares that it would have passed this ordinance, and each part thereof, regardless of the fact that one or more parts could be declared invalid, severable or unconstitutional.

Section 11. Effective Date. This ordinance shall become effective upon the execution by the Mayor and the affirmative vote of the majority of the Governing Body.

PASSED, ADOPTED and ENACTED this 8th day of December, 2021.



Mayor Louie A. Trujillo

ATTEST:

Reviewed and approved as to legal sufficiency only:



Casandra Fresquez, City Clerk



Scott Aaron, City Attorney